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PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

10/538303

REC'D 06 APR 2005

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Applicant's or agent's file reference FP18908	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416).	
International Application No. PCT/AU2003/001626	International Filing Date (day/month/year) 9 December 2003	Priority Date (day/month/year) 9 December 2002
International Patent Classification (IPC) or national classification and IPC Int. Cl. ⁷ A61F 7/00, 7/02, 7/03, 7/08		
Applicant DUNLOP, Colin		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 4 sheets, including this cover sheet.
☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 12 sheet(s).

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☒ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 8 July 2004	Date of completion of the report 16 March 2005
Name and mailing address of the IPEA/AU AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929	Authorized Officer SARAVANAMUTHU PONNAMPALAM Telephone No. (02) 6283 2070

I. Basis of the report

1. With regard to the elements of the international application:*
- ☐ the international application as originally filed.
- ☒ the description, pages , as originally filed,
pages , filed with the demand,
pages 1-9 , received on 9 March 2005 with the letter of 9 March 2005
- ☒ the claims, pages , as originally filed,
pages , as amended (together with any statement) under Article 19,
pages , filed with the demand,
pages 10-12, received on 9 March 2005 with the letter of 9 March 2005
- ☒ the drawings, pages 1,2 , as originally filed,
pages , filed with the demand,
pages , received on with the letter of
- ☐ the sequence listing part of the description:
pages , as originally filed
pages , filed with the demand
pages , received on with the letter of
2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
These elements were available or furnished to this Authority in the following language which is:
- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).
3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished
4. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/fig.
5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees the applicant has:

- ☐ restricted the claims.
- ☐ paid additional fees.
- ☐ paid additional fees under protest.
- ☐ neither restricted nor paid additional fees.

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is

- ☐ complied with.
- ☒ not complied with for the following reasons:

The international application does not comply with the requirements of unity of invention because it does not relate to one invention or to a group of inventions so linked as to form a single general inventive concept. In coming to this conclusion the International Preliminary Examining Authority has found that there are different inventions as follows:

1. Claims 1-7 and 13 & 14 are directed to a surgical warming blanket comprising at least two layers capable of forming an air space between them. It is considered that allowing access to the patient's body for surgery without disturbing the blanket comprises a first "special technical feature".
2. Claims 8-12 are directed to a heating unit for a patient warming system. It is considered that the provision of a feedback means for determining whether a patient warming blanket is attached, and responsive to a determination that the blanket is not attached to disable the delivery of warmed air to the blanket, comprises a second "special technical feature".

Since the abovementioned groups of claims do not share any of the technical features identified, a "technical relationship" between the inventions, as defined in PCT rule 13.2 does not exist. Accordingly the international application does not relate to one invention or to a single inventive concept, a priori.

Because no additional search fees were paid, the International Search Report of the International Searching Authority was restricted to the invention claimed in claims 1-7 and 13 & 14. Consequently, the International Preliminary Examination must be likewise restricted, without the need to issue an invitation to so restrict it.

4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:

- ☐ all parts.
- ☐ the parts relating to claims Nos. 1-7 and 13 & 14

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-7, 13. & 14	YES
	Claims	NO
Inventive step (IS)	Claims 1-7, 13 & 14	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-7, 13 & 14	YES
	Claims	NO

2. Citations and explanations (Rule 70.7)

NOVELTY (N) and INVENTIVE STEP (IS)

A. The documents constituting the closest prior art are:

(i) US 5304213 A

(ii) US 5928274 A

B. The subject matter of claims 1 & 13 differs from these prior art documents in that it is arranged to keep the patient warm without covering them.

C. The distinguishing features of the invention will enable access to the patient body for surgery without disturbing the blanket.

D. Therefore the application satisfies the criteria set forth in PCT Article 33(2-3), concerning the novelty and inventive step of the independent claims 1 & 13.

E. The criteria concerning novelty and inventive step of claims 2-12 & 14 are satisfied because these claims are dependent on claim 1.

INDUSTRIAL APPLICABILITY (IA)

The invention defined in claims 1-7, 13 & 14 satisfies the criterion set forth in PCT Article 33(4).